

# Regulatory development of measures for equality and non-discrimination of LGTBI people in companies



February 28th Law 4/2023, for effective equality of trans people and for the guarantee of the rights of LGTBI people incorporated the duty, for companies with more than 50 employees, to have a planned set of measures and resources to achieve real and effective equality of LGTBI people, including an action protocol to deal with possible harassment suffered by these people in the workplace.

This obligation was pending regulatory development and, after several months of comings and goings, such development has been materialized in the October 8th 2024 Royal Decree 1026/2024, which came into force on 10th October 2024.

Although different drafts of the regulation have been circulating which implied a greater role for the negotiation of the measures to be applied within the companies (similar, although to a lesser degree, to that of the equality plans), finally, with some exceptions, the main playing field will be that of the negotiation of collective bargaining agreements (CBA).

The main aspects of this new regulation are summarized below:

## HOW ARE EMPLOYEES COMPUTED TO DETERMINE IF THE NUMBER OF EMPLOYEES EXCEEDS 50?

- The total workforce of the company in all its work centres and under any form of employment contract (including permanent, temporary and part-time contracts) must be computed.

- Temporary contracts are computed if the employees are currently on payroll or if they were in the previous 6 months, in particular every 100 days worked would be computed as one (1) person.

These calculations must be made on June 30th and December 31st each year.

## COLLECTIVE NEGOTIATION OF PLANNED MEASURES AND DEADLINES:

There may be different scenarios:

- If the company is under the scope of application of a company-level CBA, the measures will be negotiated within the framework of that CBA, and the negotiating committee must be set up and begin the negotiation process before 10 January 2025.
- For CBA already in place, the negotiating committee will meet to deal exclusively with the measures planned before 10 January 2025.
- In the **absence of an applicable CBA** (there are few companies in this situation, and, in any case, they can count on external advisors who will intervene in the process with voice, but without vote):
- If the company has **employee representatives, i.e. Works Council**, the measures will be negotiated by means of company agreements, setting up the negotiating committee and starting the negotiation process before 10 January 2025.



- If the company **does not have employee representatives**, they will be negotiated by a negotiating committee formed by the most representative trade unions, as is the case with equality plans, with the certainty this time that if the unions do not respond to the company's call within 20 working days, after two calls, the company may proceed unilaterally to determine the planned measures in accordance with the contents of Royal Decree 1026/2024. The deadline for this negotiation will be 10 April 2025.

#### **APPLICATION IN THE EVENT OF DEADLINE EXPIRY:**

If **3 months** elapse from the start of the procedure for negotiation of the planned measures without reaching an agreement on them or without the applicable CBA including them, the obligated companies will apply the set of measures set forth in Royal Decree 1026/2024 until those that may subsequently be agreed by CBA or company agreements come into force.

In the end, in cases of companies with more than 50 employees that apply a company CBA or that do not have an applicable CBA, these companies are obliged to negotiate the planned measures. However, if these companies apply a CBA of a higher scope, they should be awaiting the update of the same that will take place in the coming months to include the planned measures and comply with them within the company or, failing the above, directly apply Royal Decree 1026/2024 until such update happens.

#### **VALIDITY AND CONTEXT OF THE PLANNED MEASURES:**

The validity of the measures will be as agreed, either in the applicable CBA or as determined by the negotiating parties in the case of company agreements.

The content of the measures must include the following matters: equal treatment and non-discrimination, access to employment, classification and professional promotion, awareness and language training, diverse, safe

and inclusive work environments, leave and social benefits, and a disciplinary regime.

#### **ACTION PROTOCOL AGAINST HARASSMENT AND VIOLENCE AGAINST LGTBI PEOPLE**

In addition to the measures, there is an obligation for companies to have an action protocol for dealing with harassment or violence against LGTBI people, containing at least the following sections

- A declaration of principles with an explicit and firm commitment not to tolerate any discriminatory practices based on sexual orientation and identity and gender.
- A direct scope of application to people working in the company, regardless of their legal relationship, as well as to those who apply for a job in the company.
- Guiding principles and procedural guarantees that include agility and diligence in the investigation, respect and protection of the privacy of the affected persons, confidentiality, sufficient protection for the victim against possible reprisals, which are prohibited, with restitution, where appropriate, of their working conditions, and the principle of contradiction in the hearings.
- Action procedure, in it the form of filing the complaint and the maximum term to resolve it, with the corresponding consequences of appreciating or not indications of harassment.

As a particular feature of the procedure, the regulation provides that, if the complaint is not filed directly by the affected person, it must include his or her express and informed consent to initiate the actions of the protocol.



This requirement must be related to those contained in February 20th Law 2/2023, regulating the protection of persons who report regulatory infringements and the fight against corruption, which includes the processing of anonymous complaints if they are likely to be followed up.

Finally, it should be noted that the obligation to have this protocol may be understood to be fulfilled when the company has a general protocol against harassment and violence that includes measures for LGTBI persons or specifically extends it to include them.

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